IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5501 of 2006

Date of Decision: 30.10.2007

Jasbir Singh & Ors. ...Petitioners

Vs.

Smt.Sharda Arora & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.M.K.Dogra, Advocate,
for the petitioner.

Mr.Veneet Sharma, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order passed by the learned District Judge, Amritsar vide which application moved by the petitioner for condoning the delay in filing the appeal has been ordered to be dismissed.

Plaintiff-respondent had filed a suit for possession by way of

specific performance of an agreement of sale dated 8.2.1995 regarding the house and the land underneath bearing Khasra No. 101/12 min, measuring 90' in length and 40' in breadth situated in village Gumatala. Said suit was decreed vide judgment and decree dated 27.2.2003.

The petitioner went in appeal against the said judgment and decree which was filed beyond the period of limitation. The appeal was accompanied by an application for condoning the delay on the plea that the counsel engaged by the petitioner was busy with his P.C.S. (Executive Branch) Examination and was away to Patiala. It was only after his return that the appeal was filed, it was on this assertion that it was pleaded that there was sufficient ground for condoning the delay in filing the appeal.

Said application was contested by the respondent-plaintiff. It was claimed in the reply that no explanation was forthcoming as to why the appeal could not be filed during the period from 18.4.2003 to 26.4.2003 and it was claimed that each day's delay has not been explained in the application and therefore, it deserves to be dismissed.

On the pleadings of the parties, learned lower appellate court was pleased to frame the following issues:-

1. Whether the delay in filing the appeal is liable to be condoned? OPA
2. Relief.

The learned District Judge, took note of the fact that law regarding the condonation of delay is very liberal. However, rejected, the applications primarily on the ground that it was always open to the

petitioner to have engaged some other counsel if his counsel was not available for filing the appeal within limitation. In order to support this view learned District Judge placed reliance on Order 17 Rule 1 (2) (d) of the Code of Civil Procedure which provides that no adjournment can be granted on the ground of illness of the pleader or his non-availability to conduct the case.

I feel the view taken by the learned District Judge is very technical and contrary to the settled law by the Hon'ble Supreme Court that the law of limitation has to be liberally construed. It has been authoritatively laid down by Hon'ble Supreme Court that a party does not gain anything by filing the appeal late and in case the limitation is condoned it only gives an opportunity to get the matter decided on merit whereas rejection of the application may lead to rejecting the good cause without contest. Even otherwise, in the present case the reason given for condonation of delay constituted sufficient cause as party can engage a counsel, which in fact was done in the present case. It was due to difficulty of the counsel that the appeal could not be filed within time. It is the settled proposition of law that a party cannot be allowed to suffer for negligence or fault of the counsel. If the counsel did not take steps to get filed the appeal from another counsel during his absence. No fault for this could be attributed to the petitioner.

Consequently this revision is allowed. The impugned order is set aside. The application moved by the petitioner for condonation of delay is allowed.

Learned lower appellate court is now directed to decide the appeal on merit in accordance with law.

The parties through their counsel are directed to appear before the learned District Judge, Amritsar on 14.12.2007.

(Vinod K.Sharma)
30.10.2007 **Judge**
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